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TO SECSTATE WASHDC IMMEDIATE 6941

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INFO AMEMBASSY BERLIN

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C O N F I D E N T I A L SECTION 01 OF 04 BONN 03676

E. O. 11652: GDS

TAGS: PFOR, PGOV, GW, GE, WB, US, UK, FR, UR

SUBJECT: REICHSBAHN CONSTRUCTION IN WEST BERLIN

REFS: (A) USBERLIN 427; (B) USBERLIN 426;

(C) USBERLIN 418; (D) BONN 3592;

(E) USBERLIN 395

BEGIN SUMMARY: THE FRG PERMREP TO THE GDR, GAUS, WILL MAKE A DEMARCHE IN EAST BERLIN AS SOON AS POSSIBLE TO EMPHASIZE THE SERIOUSNESS WITH WHICH THE FRG VIEWS THE FAILURE OF THE REICHSBAHN TO COMPLY WITH ALLIED LEGISLATION. THE BONN GROUP HAS AGREED THAT THE FOLLOW-UP ALLIED APPROACH TO THE SOVIETS SHOULD NOT BE MADE UNTIL RESULTS OF THE GAUS DEMARCHE ARE KNOWN, AND THAT NO FURTHER ENFORCEMENT ACTION SHOULD BE TAKEN BY THE AK OR THE SENAT FOR THE TIME BEING.

THE BONN GROUP HAS ALSO DISCUSSED POSSIBILITIES FOR A COMPROMISE, WITH THE UK REP SUGGESTING THAT IT MIGHT BE
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POSSIBLE TO VIEW THE SENAT OR THE WEST BERLIN CONSTRUC-

TION FIRMS AS INTERMEDIARIES IN OBTAINING THE PERMISSION WHICH ACCORDING TO BK/O (75)15 IS TO BE OBTAINED BY THE REICHSBAHN. THE FRG REP AGREED THAT SUCH AN INTERMEDIARY THEORY MIGHT PROVE THE ONLY POSSIBLE COMPROMISE, WHILE US AND FRENCH REPS EXPRESSED MISGIVINGS AT THE IMPLICATIONS OF SUCH A COMPROMISE. CONSULTATIONS WILL BE CONTINUED AS SOON AS A REPORT OF THE GAUS MEETING IS AVAILABLE. END SUMMARY.

1. AT SPECIAL BONN GROUP MEETING AFTERNOON OF MARCH 4, FRG REP (LUECKING) REPORTED RESULTS OF TWO FRG INTERDEPARTMENTAL MEETINGS THAT MORNING -- FIRST AT THE WORKING LEVEL AND THEN AT THE CHANCELLERY WITH STATE SECRETARY SCHUELER, GAUS, AND OTHERS. AT THE SECOND MEETING IT WAS DECIDED, SUBJECT TO ALLIED VIEWS, THAT GAUS SHOULD BE INSTRUCTED TO MAKE AN APPROACH IN EAST BERLIN AS SOON AS POSSIBLE, WITHOUT WAITING FOR THE SOVIET REPLY TO THE ALLIES. IT COULD BE GUESSED WHAT THE SOVIET REPLY WOULD BE, AND THERE MIGHT BE A CHANCE TO INFLUENCE IT BY LETTING THE GDR KNOW HOW SERIOUSLY THE FRG VIEWED THE SITUATION.

2. THE LINE TO BE TAKEN BY GAUS, LUECKING CONTINUED, WOULD BE THAT THE PROBLEM WAS ONE OF IMPLEMENTING THE DECEMBER 19 TRAFFIC AGREEMENT. IN CONCLUDING THE AGREEMENT, IT HAD OF COURSE BEEN THE UNDERSTANDING OF THE FRG -- AND THE FRG HAD SEEN NO NEED TO DISCUSS THE MATTER -- THAT ALL ACTIONS TO IMPLEMENT THE AGREEMENT WOULD BE TAKEN IN ACCORDANCE WITH THE WELL-ESTABLISHED LEGAL SITUATION IN BERLIN AND THE PROCEDURES USED IN THE PAST IN SIMILAR SITUATIONS.

3. LUECKING REQUESTED ALLIED VIEWS ON A GAUS APPROACH, WHICH MIGHT BE MADE AS EARLY AS FRIDAY MORNING, MARCH 5. HE ALSO SUGGESTED THAT THE BONN GROUP CONSIDER NEXT STEPS AND WORK OUT AN AGREED SCENARIO ON WHAT MIGHT BE ACCEPTABLE IN TERMS OF GDR COMPLIANCE AND WHAT WOULD BE TOTALLY UNACCEPTABLE.

4. ALL THREE ALLIED REPS AGREED ON THE DESIRABILITY OF
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A GAUS DEMARCHE TO THE GDR AS SOON AS POSSIBLE AND ON THE PROPOSED LINE. THE BONN GROUP ALSO AGREED THAT THE ALLIES IN BERLIN SHOULD NOT MAKE A FOLLOW-UP APPROACH TO THE SOVIETS BEFORE THE RESULTS OF THE GAUS DEMARCHE WERE KNOWN AND, IN ADDITION, THAT FOR THE TIME BEING NO FURTHER ACTION AIMED AT ENFORCEMENT OF THE BK/O SHOULD BE TAKEN BY THE AK OR THE SENAT, BARRING SUDDEN UNEXPECTED NEW DEVELOPMENTS. THE LIKELIHOOD THAT EVENTS

MIGHT MOVE QUICKLY ARGUED FOR CLOSE COORDINATION IN
BONN OF FUTURE ACTIONS.

5. DISCUSSION THEN TURNED TO A CONSIDERATION OF WHAT
THE ALLIES MIGHT CONSIDER THE MINIMUM ACCEPTABLE FOR
COMPLIANCE WITH BK/O (75)15, AND PARTICULARLY PARAGRAPH

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4 (A), WHICH READS AS FOLLOWS:

"ALL PLANS AND CONTRACTS RELATIVE TO THESE MEASURES
ARE TO BE SUBMITTED BY THE DEUTSCHE REICHSBAHN
TO THE COMPETENT ALLIED SECTOR AUTHORITIES FOR
PRIOR APPROVAL."

6. NOTING THAT HE WAS SPEAKING WITHOUT INSTRUCTIONS, THE
UK REP (HITCH) EXPRESSED THE VIEW THAT THE MINIMUM
WOULD BE TO BE ABLE TO SAY THAT THE PURPOSE OF THE

BK/O HAD BEEN FULFILLED -- I.E., THAT THE AK HAD RECEIVED THE INFORMATION NECESSARY FOR IT TO DETERMINE THAT THE SPECIAL STATUS OF THE REICHSBAHN HAD NOT BEEN AFFECTED. IT WOULD NOT MATTER WHERE THE INFORMATION CAME FROM; IT COULD BE PROVIDED TO THE AK BY THE SENAT OR BY THE WEST BERLIN FIRMS HIRED BY THE REICHSBAHN TO PERFORM THE WORK. THE AK -- WHICH AS A MATTER OF LAW IS THE ONE TO DETERMINE WHAT ITS OWN LEGISLATION MEANS --
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COULD CONSIDER THAT THE INFORMATION HAD BEEN PROVIDED ON BEHALF OF THE REICHSBAHN, AND IT WOULD ISSUE FORMAL AUTHORIZATION TO THE REICHSBAHN TO PROCEED WITH THE WORK. IT WOULD, OF COURSE, BE NECESSARY FOR THE REICHSBAHN TO ACCEPT SUCH AUTHORIZATION WITHOUT CONTESTING IT.

7. A SECOND PART OF THE UK PROPOSAL WOULD BE THAT THE AK, IN ORDER TO RESTORE LOST FACE, SHOULD SUSPEND WORK FOR A PERIOD -- PERHAPS A DAY -- WHILE IT WAS REVIEWING THE DOCUMENTS AND ISSUING APPROVAL. THAT STEP WOULD NOT BE TAKEN HOWEVER, UNTIL THE AK WAS CERTAIN IT WAS RECEIVING THE NECESSARY DOCUMENTS.

8. US REP EXPRESSED THE VIEW THAT THE UK PROPOSAL REPRESENTED LESS THAN THE MINIMUM ACCEPTABLE, IN THAT IT WOULD AMOUNT TO AGREEING THAT THE REICHSBAHN COULD GET AWAY WITHOUT COMPLYING AT ALL WITH THE BK/O. WHAT WAS NEEDED WAS NOT TECHNICAL DATA BUT A SHOWING THAT, CONTRARY TO WHAT THE GDR WAS SAYING, THE DECEMBER 19 AGREEMENT WAS NOT A GDR-SENAT AGREEMENT AND DID NOT GIVE THE GDR THE RIGHT TO PERFORM WORK IN WEST BERLIN WITHOUT ALLIED ASSENT. FRENCH REP (BOISSIEU) EXPRESSED AGREEMENT WITH THE US VIEW.

9. ASKED FOR ELABORATION ON THE INTERNAL GERMAN DISCUSSIONS, LUECKING SAID THEY HAD REACHED EXACTLY THE SAME CONCLUSIONS AS THE UK. IT WOULD BE IMPOSSIBLE TO GET THE GDR TO PRESENT AN APPLICATION TO THE AK AS IT HAD DONE IN THE PAST, AND THE FRG DID NOT SEE HOW IT COULD BRING PRESSURE TO BEAR ON THE GDR TO GET IT TO COMPLY WITH ESTABLISHED PROCEDURES. THE ONLY COMPROMISE THE FRG HAD BEEN ABLE TO THINK OF WAS AN INTERMEDIARY THEORY SUCH AS THE ONE THE UK HAD PROPOSED. IT HAD REACHED NO FIRM CONCLUSION AS TO WHETHER IT WOULD BE BETTER TO CONSIDER THE SENAT OR THE CONTRACTING FIRMS AS THE INTERMEDIARY BETWEEN THE REICHSBAHN AND THE AK, REALIZING THAT THERE WERE PROS AND CONS FOR EACH. LUECKING ADDED THAT IT WOULD BE NECESSARY TO MAKE CLEAR TO THE GDR THAT THIS WAS THE MINIMUM COMPROMISE AND THAT

THE PLAN WOULD NOT WORK AT ALL IF THE GDR DISPUTED THE
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INTERMEDIARY THEORY.

10. MEICHSNER (BERLIN REPRESENTATION) ASKED WHETHER THE
US REP WOULD CONSIDER IT TOTALLY UNACCEPTABLE TO USE THE
INTERMEDIARY THEORY EVEN IF THE REICHSBAHN WERE, FOR
EXAMPLE, TO REQUEST THE SENAT TO TRANSMIT THE NECESSARY
INFORMATION TO THE AK. US REP RESPONDED THAT HE WAS,
OF COURSE, NOT RULING OUT THE ULTIMATE NECESSITY FOR
FALLING BACK ON AN INTERMEDIARY PLAN AND THAT AN ACTIVE
REICHSBAHN ROLE SUCH AS MEICHSNER SUGGESTED
MIGHT MAKE IT MORE PALATABLE. HE EXPRESSED SOME PER-
SONAL SKEPTICISM, HOWEVER, THAT THE GDR WOULD PERMIT
SUCH A REQUEST TO BE MADE IN THE NAME OF THE REICHSBAHN,
GIVEN THE ATTITUDE OF THE GDR FOREIGN MINISTRY AS EX-
PRESSED ON FEBRUARY 27 TO A SENAT OFFICIAL (PARA 4,
REF E).

11. AFTER PROLONGED DISCUSSION
BOISSIEU, AS CHAIRMAN, SUMMED UP AS FOLLOWS:

A. THE ALLIES SHOULD NOT TAKE ANY MORE ACTION VIS-
A-VIS THE SOVIETS UNTIL THE REPORT OF THE GAUS DEMARCHE
WAS AVAILABLE.

B. NO MORE ENFORCEMENT ACTION SHOULD BE TAKEN IN

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BERLIN FOR THE TIME BEING.

C. IF THE RESPONSE FROM THE GDR AND THE SOVIETS WERE EITHER POSITIVE OR TOTALLY NEGATIVE, THE ANSWER WOULD BE OBVIOUS. IN THE LATTER CASE, THE ALLIES WOULD PRESUMABLY BE FORCED TO TAKE ACTION TO ENFORCE THE BK/O.

D. THE MORE LIKELY RESPONSE WOULD BE AMBIGUOUS, IN WHICH CASE A COMPROMISE SHOULD BE SOUGHT AND PRAGMATIC SOLUTIONS WOULD BE REQUIRED. IT MIGHT BE POSSIBLE TO BUILD A SATISFACTORY COMPROMISE AROUND THE REQUEST OF THE GDR FOR THE SENAT TO ACQUIRE ADDITIONAL LAND, ALTHOUGH THIS IDEA WAS NOT DISCUSSED IN DETAIL AND NONE OF THE BONN GROUP REPS HAD ANY CLEAR NOTION OF WHAT WAS INVOLVED IN THE LAND REQUEST OR HOW IT MIGHT BE USED.

E. THE ONLY OTHER COMPROMISE WHICH CAME TO MIND
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WAS THE UK EMBASSY PROPOSAL, SUPPORTED BY THE FRG, THAT THE ALLIES ACCEPT AN INTERMEDIARY FOR TRANSMITTING DOCUMENTS BETWEEN THE REICHSBAHN AND THE AK. QUESTIONS WHICH WOULD HAVE TO BE CONSIDERED UNDER THIS SCENARIO WOULD INCLUDE:

-- WHETHER THE SENAT OR THE CONTRACTING FIRMS SHOULD BE CONSIDERED THE INTERMEDIARY;

-- WHAT MINIMUM ROLE WOULD BE REQUIRED OF THE REICHSBAHN (COULD IT REMAIN TOTALLY PASSIVE, OR WOULD AN ACTIVE REQUEST ON ITS PART BE REQUIRED?);

- WHAT FORM WOULD BE USED FOR TRANSMITTING THE DOCUMENTS; AND
- WHAT ACTION THE AK SHOULD TAKE, ONCE IT RECEIVED THE NECESSARY DATA, TO SHOW THAT IT WAS MAINTAINING ITS RIGHTS (I.E., SHOULD THERE BE A TEMPORARY WORK STOPPAGE?).

F. BOTH THE US AND THE FRENCH REPS MAINTAINED RESERVATIONS ON THIS LATTER COMPROMISE SOLUTION AND WOULD SEEK INSTRUCTIONS. HITCH INTERJECTED THAT HE WOULD ALSO HAVE TO HAVE INSTRUCTIONS BEFORE AGREEING TO THE COMPROMISE HE HAD SUGGESTED.

12. IT WAS AGREED THAT THE BONN GROUP WOULD RECONVENE AS SOON AS THE FRG COULD PROVIDE INFORMATION ON THE GAUS DEMARCHE.

13. COMMENT: A DECISION ON THE COURSE OF ACTION TO BE TAKEN BY THE ALLIES WILL, OF COURSE, NEED TO AWAIT THE GAUS DEMARCHE AND FURTHER SOUNDINGS WITH THE SOVIETS. THE POSSIBILITIES, HOWEVER, SEEM TO BE SHAPING UP RATHER CLEARLY: (A) CLEAR GDR COMPLIANCE WITH THE BK/O (THOUGHT TO BE UNLIKELY); (B) CLEAR AND OPEN GDR DEFIANCE OF BK/O (WHICH WOULD LEAVE ALLIES NO CHOICE BUT TO TAKE STEPS AGAINST THE CONSTRUCTION PROJECTS IN WEST BERLIN); OR (C) SOMETHING LESS THAN CLEAR-CUT, PUBLIC DEFIANCE BY THE GDR OF THE ALLIED LEGISLATION. IN THIS LATTER
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CASE, THE ALLIES WOULD NEED TO DECIDE WHETHER TO INSIST ON ABSOLUTE COMPLIANCE WITH BK/O (75) 15 OR TO BACK DOWN TO THE EXTENT OF AGREEING WITH SOME KIND OF "COMPROMISE" SUCH AS THE INTERMEDIARY THEORY ADVANCED BY THE UK REP.

14. IN CASE OF AN INDICATION BY THE OTHER SIDE THAT SOME KIND OF "COMPROMISE" IS POSSIBLE, THE PROBLEMS WITH ALLIED INSISTENCE ON GDR COMPLIANCE WITH THE LAW ARE IMMEDIATE AND VISIBLE. THE CHANCELLOR DEMONSTRATED IN DECEMBER THAT HE HAD LITTLE UNDERSTANDING OF THE COMPLEXITIES OF THE BERLIN SITUATION AND LITTLE PATIENCE WITH WHAT HE VIEWS AS MERE LEGALISMS ADVANCED IN THE NAME OF PRESERVING THE ALLIED POSITION IN BERLIN. THE TRANSIT AGREEMENT WAS OF CONSIDERABLE IMPORTANCE TO HIM, AND HE WOULD OBVIOUSLY NOT WELCOME ACTION ON THE PART OF THE ALLIES WHICH MIGHT HINDER FULFILLMENT OF THE AGREEMENT. THE OPPOSITION WOULD DERIVE CONSIDERABLE MILEAGE OUT OF SUCH A DEVELOPMENT IN THE ELECTION CAMPAIGN.

15. HOWEVER, TO ACCEPT THE INTERMEDIARY THEORY OR ANY OTHER "COMPROMISE" WHICH WOULD REVEAL THAT THE GDR DID NOT HAVE TO OBEY THE LAW IN WEST BERLIN WOULD INVOLVE CONSIDERABLE POTENTIAL DANGER FOR THE LONG RUN. IT

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WOULD GIVE CONFIRMATION TO THE IDEA, WHICH THE GDR IS REPEATING WITH DISTURBING REGULARITY, THAT THE DECEMBER 19 AGREEMENT WAS ONE CONCLUDED BY THE GDR AND THE SENAT, AND THUS TEND TO VALIDATE GDR VIEWS ON WEST BERLIN AS AN INDEPENDENT ENTITY. MOREOVER, IT WOULD ESTABLISH A PRECEDENT FOR THE GDR'S TAKING ACTION DIRECTLY IN WEST BERLIN WITHOUT BENEFIT OF AK APPROVAL. THE FACT THAT THE REICHSBAHN IS CONTINUING TO COMPLY WITH NORMAL PROCEDURES IN OTHER MATTERS AFFECTING REICHSBAHN PROPERTY IN WEST BERLIN (REF C), HEIGHTENS OUR FEARS THAT GDR REFUSAL TO COMPLY WITH BK/O (75) 15, WHICH WAS A RESTATEMENT OF THOSE LONG-

STANDING NORMAL PROCEDURES, IS DESIGNED TO USE THE
DECEMBER 19 AGREEMENT FOR ADVANCING THESE POSITIONS.

16. THERE IS ANOTHER FUNDAMENTAL CONSIDERATION. WHAT
THE GDR IS AIMING AT IS NOTHING LESS THAN A CLEAR
VIOLATION OF THE QA: IF THE EAST GERMANS SUCCEED WITH
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THEIR INTENT THEY WILL HAVE UNILATERALLY (WITH SOVIET
HELP) CHANGED THE SITUATION WHICH HAS DEVELOPED IN
BERLIN. WE BELIEVE THIS BASIC POINT SHOULD NOT BE LOST
SIGHT OF AMONG ALL THE SEEMINGLY PETTY AND UNIMPORTANT
DISCUSSION OF REICHSBAHN CONSTRUCTION.

17. WE WILL PROVIDE RECOMMENDATIONS FOR THE
DEPARTMENT'S CONSIDERATION ONCE FULLER INFORMATION ON
THE GDR AND SOVIET POSITION IS AVAILABLE. INTERIM
GUIDANCE WOULD BE WELCOME.
HILLENBRAND

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